

AMENDED IN ASSEMBLY JUNE 20, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

AMENDED IN ASSEMBLY JUNE 20, 2011

SENATE BILL

No. 50

Introduced by Senators Correa and Blakeslee

December 15, 2010

An act to amend Sections 23152 and 23153 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as amended, Correa. Vehicles: driving under the influence: controlled substances.

(1) Existing law makes it a crime for a person who is under the influence of alcohol or any drug, or under the combined influence of alcohol and any drug, to drive a vehicle. Existing law also makes it a crime for a person to drive a vehicle with 0.08% or more, by weight, of alcohol in his or her blood.

This bill would, in addition, make it a crime for a person to have a controlled substance, *as defined*, in his or her blood while driving a vehicle.

(2) Existing law makes it a crime for a person who drives a vehicle under the influence of alcohol or any drug, or under the combined influence of alcohol and any drug, to do any act forbidden by law or neglect any duty imposed by law while driving a vehicle when that act or neglected duty is the proximate cause of bodily injury to any person other than the driver. Existing law also makes it a crime for a person who drives a vehicle with 0.08% or more, by weight, of alcohol in his or her blood to do any act forbidden by law or neglect any duty imposed

by law while driving a vehicle when that act or neglected duty is the proximate cause of bodily injury to any person other than the driver.

This bill would, in addition, make it a crime for a person to have a controlled substance, *as defined*, in his or her blood while driving a vehicle and to do any act forbidden by law or neglect any duty imposed by law while driving when that act or neglected duty is the proximate cause of bodily injury to any person other than the driver.

(3) Under existing law, there is a rebuttable evidentiary presumption that a person was under the influence of alcohol at the time he or she drove a vehicle if he or she had 0.08% or more, by weight, of alcohol in his or her blood at the time of a chemical test if the chemical test was done within 3 hours ~~of when~~ *after* the person drove the vehicle.

This bill would create a rebuttable evidentiary presumption that a person had a controlled substance in his or her blood at the time he or she drove a vehicle if the person had a controlled substance, *as defined*, in his or her blood at the time of the performance of a chemical test if the test is done within 3 hours after the person drove the vehicle.

(4) Because this bill would create new crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) The problem of drugged driving continues to rise in*
- 4 *California and poses a substantial threat to public safety.*
- 5 *(b) According to the National Highway Traffic Safety*
- 6 *Administration, 30 percent of all drivers who were killed in motor*
- 7 *vehicle crashes in California in 2010 tested positive for drugs, an*
- 8 *increase since 2006.*
- 9 *(c) Research shows that drugs have an adverse effect on*
- 10 *judgment, reaction time, motor skills, and memory that are all*
- 11 *critical skills for safe and responsible driving.*

1 (d) *Drugged driving is a problem not widely recognized by the*
2 *public, but increases in crashes, fatalities, and injuries demonstrate*
3 *that immediate action is needed to reduce the number of impaired*
4 *drivers on our roads.*

5 (e) *Because there is currently no established impairment level*
6 *for illegal hardcore drugs and other drugs used illegally,*
7 *prosecuting drug impairment driving cases can be difficult.*
8 *Establishing a zero tolerance for illegal drug use while driving*
9 *will assist in prosecuting these cases and advance public safety.*

10 ~~SECTION 1.~~

11 SEC. 2. Section 23152 of the Vehicle Code, as amended by
12 Section 31 of Chapter 455 of the Statutes of 1995, is amended to
13 read:

14 23152. (a) It is unlawful for a person who is under the
15 influence of any alcoholic beverage or drug, or under the combined
16 influence of any alcoholic beverage and drug, to drive a vehicle.

17 (b) ~~(1)~~—It is unlawful for a person who has 0.08 percent or more,
18 by weight, of alcohol in his or her blood to drive a vehicle.

19 ~~(2)~~

20 (1) For purposes of this article and Section 34501.16, *the*
21 percent, by weight, of alcohol in a person's blood is based upon
22 grams of alcohol per 100 milliliters of blood or grams of alcohol
23 per 210 liters of breath.

24 ~~(3)~~

25 (2) In any prosecution under this subdivision, it is a rebuttable
26 presumption that the person had 0.08 percent or more, by weight,
27 of alcohol in his or her blood at the time of driving the vehicle if
28 the person had 0.08 percent or more, by weight, of alcohol in his
29 or her blood at the time of the performance of a chemical test
30 within three hours after the driving.

31 (c) It is unlawful for a person who is addicted to the use of any
32 drug to drive a vehicle. This subdivision shall not apply to a person
33 who is participating in a narcotic treatment program approved
34 pursuant to Article 3 (commencing with Section 11875) of Chapter
35 1 of Part 3 of Division 10.5 of the Health and Safety Code.

36 (d) ~~(1)~~—It is unlawful for any person who has 0.04 percent or
37 more, by weight, of alcohol in his or her blood to drive a
38 commercial motor vehicle, as defined in Section 15210.

39 ~~(2) In~~

1 In any prosecution under this subdivision, it is a rebuttable
2 presumption that the person had 0.04 percent or more, by weight,
3 of alcohol in his or her blood at the time of driving the vehicle if
4 the person had 0.04 percent or more, by weight, of alcohol in his
5 or her blood at the time of the performance of a chemical test
6 within three hours after the driving.

7 (e) ~~(1)~~—It is unlawful for a person who has a controlled substance
8 in his or her blood to drive a vehicle.

9 ~~(2)~~—

10 (1) In any prosecution under this subdivision, it is a rebuttable
11 presumption that the person had a controlled substance in his or
12 her blood at the time of driving the vehicle if the person had any
13 measurable amount of a controlled substance in his or her blood
14 at the time of the performance of a chemical test within three hours
15 after the driving.

16 ~~(3)~~

17 (2) For purposes of this subdivision, a controlled substance is
18 any of the following:

19 (A) A controlled substance as specified in subdivision (b) or
20 (c), paragraph (14), (15), (21), (22), or (23) of subdivision (d),
21 subdivision (e), or paragraph (1) of subdivision (f) of Section 11054
22 of the Health and Safety Code, or subdivision (b) or (c), paragraph
23 (1) or (2) of subdivision (d), or paragraph (3) of subdivision (e) of
24 Section 11055 of the Health and Safety Code.

25 (B) A narcotic drug classified in Schedule III of Section 11056,
26 Schedule IV of Section 11057, or Schedule V of Section 11058
27 of the Health and Safety Code, ~~except when administered by or~~
28 ~~under the direction of a person licensed by the state to dispense,~~
29 ~~prescribe, or administer controlled substances. The defendant shall~~
30 ~~bear the burden of showing that the exception applies.~~

31 (C) *A controlled substance does not include a controlled*
32 *substance or narcotic drug listed in this paragraph when*
33 *administered by or under the direction of a person licensed by the*
34 *state to dispense, prescribe, or administer controlled substances.*
35 *The defendant shall bear the burden of showing that the exception*
36 *applies.*

37 (f) This section shall become operative on January 1, 1992, and
38 shall remain operative until the director determines that federal
39 regulations adopted pursuant to the Commercial Motor Vehicle
40 Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in

1 Section 383.51 or 391.15 of Title 49 of the Code of Federal
2 Regulations do not require the state to prohibit operation of
3 commercial vehicles when the operator has a concentration of
4 alcohol in his or her blood of 0.04 percent by weight or more.

5 (g) The director shall submit a notice of the determination under
6 subdivision (f) to the Secretary of State, and this section shall be
7 repealed upon the receipt of that notice by the Secretary of State.

8 ~~SEC. 2.~~

9 *SEC. 3.* Section 23152 of the Vehicle Code, as amended by
10 Section 32 of Chapter 455 of the Statutes of 1995, is amended to
11 read:

12 23152. (a) It is unlawful for a person who is under the
13 influence of any alcoholic beverage or drug, or under the combined
14 influence of any alcoholic beverage and drug, to drive a vehicle.

15 (b) ~~(1)~~ It is unlawful for a person who has 0.08 percent or more,
16 by weight, of alcohol in his or her blood to drive a vehicle.

17 ~~(2)~~

18 (1) For purposes of this article and Section 34501.16, *the*
19 percent, by weight, of alcohol in a person's blood is based upon
20 grams of alcohol per 100 milliliters of blood or grams of alcohol
21 per 210 liters of breath.

22 ~~(3)~~

23 (2) In any prosecution under this subdivision, it is a rebuttable
24 presumption that the person had 0.08 percent or more, by weight,
25 of alcohol in his or her blood at the time of driving the vehicle if
26 the person had 0.08 percent or more, by weight, of alcohol in his
27 or her blood at the time of the performance of a chemical test
28 within three hours after the driving.

29 (c) It is unlawful for a person who is addicted to the use of any
30 drug to drive a vehicle. This subdivision shall not apply to a person
31 who is participating in a narcotic treatment program approved
32 pursuant to Article 3 (commencing with Section 11875) of Chapter
33 1 of Part 3 of Division 10.5 of the Health and Safety Code.

34 (d) ~~(1)~~ It is unlawful for a person to who has a controlled
35 substance in his or her blood to drive a vehicle.

36 ~~(2)~~

37 (1) In any prosecution under this subdivision, it is a rebuttable
38 presumption that the person had a controlled substance in his or
39 her blood at the time of driving the vehicle if the person had any
40 measurable amount of a controlled substance in his or her blood

1 at the time of the performance of a chemical test within three hours
2 after the driving.

3 ~~(3)~~

4 (2) For purposes of this subdivision, a controlled substance is
5 any of the following:

6 (A) A controlled substance as specified in subdivision (b) or
7 (c), paragraph (14), (15), (21), (22), or (23) of subdivision (d),
8 subdivision (e), or paragraph (1) of subdivision (f) of Section 11054
9 of the Health and Safety Code, or subdivision (b) or (c), paragraph
10 (1) or (2) of subdivision (d), or paragraph (3) of subdivision (e) of
11 Section 11055 of the Health and Safety Code.

12 (B) A narcotic drug classified in Schedule III of Section 11056,
13 Schedule IV of Section 11057, or Schedule V of Section 11058
14 of the Health and Safety Code, ~~except when administered by or~~
15 ~~under the direction of a person licensed by the state to dispense,~~
16 ~~prescribe, or administer controlled substances. The defendant shall~~
17 ~~bear the burden of showing that the exception applies.~~

18 (C) *A controlled substance does not include a controlled*
19 *substance or narcotic drug listed in this paragraph when*
20 *administered by or under the direction of a person licensed by the*
21 *state to dispense, prescribe, or administer controlled substances.*
22 *The defendant shall bear the burden of showing that the exception*
23 *applies.*

24 (e) This section shall become operative only upon the receipt
25 by the Secretary of State of the notice specified in subdivision (f)
26 of Section 23152, as added by Section 25 of Chapter 1114 of the
27 Statutes of 1989.

28 ~~SEC. 3.~~

29 *SEC. 4.* Section 23153 of the Vehicle Code, as amended by
30 Section 18 of Chapter 974 of the Statutes of 1992, is amended to
31 read:

32 23153. (a) It is unlawful for a person, while under the influence
33 of any alcoholic beverage or drug, or under the combined influence
34 of any alcoholic beverage and drug, to drive a vehicle and
35 concurrently do any act forbidden by law, or neglect any duty
36 imposed by law in driving the vehicle, which act or neglect
37 proximately causes bodily injury to a person other than the driver.

38 (b) ~~(1)~~ It is unlawful for a person, while having 0.08 percent
39 or more, by weight, of alcohol in his or her blood to drive a vehicle
40 and concurrently do any act forbidden by law, or neglect any duty

1 imposed by law in driving the vehicle, which act or neglect
2 proximately causes bodily injury to a person other than the driver.

3 ~~(2) In~~

4 *In* any prosecution under this subdivision, it is a rebuttable
5 presumption that the person had 0.08 percent or more, by weight,
6 of alcohol in his or her blood at the time of driving the vehicle if
7 the person had 0.08 percent or more, by weight, of alcohol in his
8 or her blood at the time of the performance of a chemical test
9 within three hours after driving.

10 (c) In proving the person neglected any duty imposed by law
11 in driving the vehicle, it is not necessary to prove that any specific
12 section of this code was violated.

13 (d) ~~(1)~~ It is unlawful for a person, while having 0.04 percent
14 or more, by weight, of alcohol in his or her blood to drive a
15 commercial motor vehicle, as defined in Section 15210, and
16 concurrently to do any act forbidden by law or neglect any duty
17 imposed by law in driving the vehicle, which act or neglect
18 proximately causes bodily injury to a person other than the driver.

19 ~~(2) In~~

20 *In* any prosecution under this subdivision, it is a rebuttable
21 presumption that the person had 0.04 percent or more, by weight,
22 of alcohol in his or her blood at the time of driving the vehicle if
23 the person had 0.04 percent or more, by weight, of alcohol in his
24 or her blood at the time of performance of a chemical test within
25 three hours after driving.

26 (e) ~~(1)~~ It is unlawful for a person who has a controlled substance
27 in his or her blood to drive a vehicle and concurrently do any act
28 forbidden by law, or neglect any duty imposed by law in driving
29 the vehicle, which act or neglect proximately causes bodily injury
30 to a person other than the driver.

31 ~~(2)~~

32 (1) In any prosecution under this subdivision, it is a rebuttable
33 presumption that the person had a controlled substance in his or
34 her blood at the time of driving the vehicle if the person had any
35 measurable amount of a controlled substance in his or her blood
36 at the time of the performance of a chemical test within three hours
37 after the driving.

38 ~~(3)~~

39 (2) For purposes of this subdivision, a controlled substance is
40 any of the following:

1 (A) A controlled substance as specified in subdivision (b) or
2 (c), paragraph (14), (15), (21), (22), or (23) of subdivision (d),
3 subdivision (e), or paragraph (1) of subdivision (f) of Section 11054
4 of the Health and Safety Code, or subdivision (b) or (c), paragraph
5 (1) or (2) of subdivision (d), or paragraph (3) of subdivision (e) of
6 Section 11055 of the Health and Safety Code.

7 (B) A narcotic drug classified in Schedule III of Section 11056,
8 Schedule IV of Section 11057, or Schedule V of Section 11058
9 of the Health and Safety Code, ~~except when administered by or~~
10 ~~under the direction of a person licensed by the state to dispense,~~
11 ~~prescribe, or administer controlled substances. The defendant shall~~
12 ~~bear the burden of showing that the exception applies.~~

13 (C) *A controlled substance does not include a controlled*
14 *substance or narcotic drug listed in this paragraph when*
15 *administered by or under the direction of a person licensed by the*
16 *state to dispense, prescribe, or administer controlled substances.*
17 *The defendant shall bear the burden of showing that the exception*
18 *applies.*

19 (f) This section shall become operative on January 1, 1992, and
20 shall remain operative until the director determines that federal
21 regulations adopted pursuant to the Commercial Motor Vehicle
22 Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in Section
23 383.51 or 391.15 of Title 49 of the Code of Federal Regulations
24 do not require the state to prohibit operation of commercial vehicles
25 when the operator has a concentration of alcohol in his or her blood
26 of 0.04 percent by weight or more.

27 (g) The director shall submit a notice of the determination under
28 subdivision (f) to the Secretary of State, and this section shall be
29 repealed upon the receipt of that notice by the Secretary of State.

30 ~~SEC. 4.~~

31 *SEC. 5.* Section 23153 of the Vehicle Code, as amended by
32 Section 19 of Chapter 974 of the Statutes of 1992, is amended to
33 read:

34 23153. (a) It is unlawful for a person, while under the influence
35 of any alcoholic beverage or drug, or under the combined influence
36 of any alcoholic beverage and drug, to drive a vehicle and
37 concurrently do any act forbidden by law or neglect any duty
38 imposed by law in driving the vehicle, which act or neglect
39 proximately causes bodily injury to a person other than the driver.

(b) ~~(1)~~—It is unlawful for a person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and concurrently do any act forbidden by law or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to a person other than the driver.

~~(2) In~~

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after driving.

(c) ~~(1)~~—It is unlawful for a person to have a controlled substance in his or her blood to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to a person other than the driver.

~~(2)~~

(1) In any prosecution under this subdivision, it is a rebuttable presumption that the person had a controlled substance in his or her blood at the time of driving the vehicle if the person had any measurable amount of a controlled substance in his or her blood at the time of the performance of a chemical test within three hours after the driving.

~~(3)~~

(2) For purposes of this subdivision, a controlled substance is any of the following:

(A) A controlled substance as specified in subdivision (b) or (c), paragraph (14), (15), (21), (22), or (23) of subdivision (d), subdivision (e), or paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code, or subdivision (b) or (c), paragraph (1) or (2) of subdivision (d), or paragraph (3) of subdivision (e) of Section 11055 of the Health and Safety Code.

(B) A narcotic drug classified in Schedule III of Section 11056, Schedule IV of Section 11057, or Schedule V of Section 11058 of the Health and Safety Code, ~~except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. The defendant shall bear the burden of showing that the exception applies.~~

1 (C) A controlled substance does not include a controlled
2 substance or narcotic drug listed in this paragraph when
3 administered by or under the direction of a person licensed by the
4 state to dispense, prescribe, or administer controlled substances.
5 The defendant shall bear the burden of showing that the exception
6 applies.

7 (d) In proving the person neglected any duty imposed by law
8 in driving the vehicle, it is not necessary to prove that any specific
9 section of this code was violated.

10 (e) This section shall become operative only upon the receipt
11 by the Secretary of State of the notice specified in subdivision (f)
12 of Section 23153.

13 ~~SEC. 5.~~

14 SEC. 6. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.